

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|-------------------------------------|---|-----------------|
| NATIONAL-SOUTHWIRE ALUMINUM COMPANY |) | |
| |) | |
| COMPLAINANT |) | |
| |) | |
| VS. |) | CASE NO. 89-376 |
| |) | |
| BIG RIVERS ELECTRIC CORPORATION, |) | |
| GREEN RIVER ELECTRIC CORPORATION, |) | |
| ALCAN ALUMINUM CORPORATION, AND |) | |
| HENDERSON-UNION RURAL ELECTRIC |) | |
| COOPERATIVE CORPORATION |) | |
| |) | |
| DEFENDANTS |) | |

O R D E R

On January 29, 1990, National-Southwire Aluminum Company, Big Rivers Electric Corporation, and Green River Electric Corporation jointly filed a motion requesting an indefinite continuance of the informal conference scheduled for February 1, 1990. In support of their motion, the movants state that they are currently engaged in settlement negotiations and an informal conference at this time would be disruptive to those negotiations.

Based on the motion and being advised, the Commission finds good cause to cancel the February 1, 1990 informal conference. The Commission further finds that the movants should file a brief statement every two weeks setting forth the status of their settlement negotiations.

IT IS THEREFORE ORDERED that:

1. The informal conference scheduled for February 1, 1990 be and it hereby is continued generally.

2. The movants shall file a brief statement every two weeks setting forth the status of their settlement negotiations. The first report shall be due two weeks from the date of this Order.

Done at Frankfort, Kentucky, this 30th day of January, 1990.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:


Executive Director

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITY OF NEWPORT)
V.)
CAMPBELL COUNTY KENTUCKY WATER DISTRICT)
AND)
KENTON COUNTY WATER DISTRICT NO. 1)
and) CASE NO. 89-014
CHARLES ATKINS AND)
STEVEN J. FRANZEN)
V.)
CAMPBELL COUNTY KENTUCKY WATER DISTRICT)

APPLICATION AND NOTICE OF CAMPBELL COUNTY)
KENTUCKY WATER DISTRICT (A) TO ISSUE)
REVENUE BONDS IN THE APPROXIMATE PRINCIPAL)
AMOUNT OF \$5,535,000 (B) TO CONSTRUCT)
ADDITIONAL PLANT FACILITIES OF APPROXI-) CASE NO. 89-029
MATELY \$4,523,000 (C) NOTICE OF ADJUSTMENT)
OF RATES EFFECTIVE MAY 1, 1989)
(D) SUBMISSION OF LONG-TERM WATER SUPPLY)
CONTRACT)

THE APPLICATION OF KENTON COUNTY WATER)
DISTRICT NO. 1 (A) TO ISSUE REVENUE BONDS)
IN THE APPROXIMATE PRINCIPAL AMOUNT OF)
\$2,335,000 (B) TO CONSTRUCT ADDITIONAL) CASE NO. 89-179
PLANT FACILITIES OF APPROXIMATELY)
\$2,032,000 (C) SUBMISSION OF CONTRACT TO)
SUPPLY ADDITIONAL WATER (ENTIRE DEMAND))
TO CAMPBELL COUNTY KENTUCKY WATER DISTRICT)

O R D E R

Finding that one Order will expedite the final resolution of the three cases addressed herein and that no prejudice will result to any of the parties, the Commission has consolidated its decisions into one Order.

Newport Complaint

On January 19, 1989, the city of Newport filed a formal complaint with the Commission naming Campbell County Kentucky Water District ("Campbell District") and Kenton County Kentucky Water District No. 1 ("Kenton District") as defendants. Both water districts are jurisdictional utilities. Newport operates a municipal water utility and is not jurisdictional.

On September 27, 1988, Campbell District and Kenton District entered into an "exclusive" contract for water supply to take effect upon completion of unspecified construction by Kenton District. This contract provides that it:

shall become effective in approximately two (2) years or when the planned construction of the Kenton County District has been completed in order that Kenton County District may serve an adequate supply of water to the Campbell County District not more than three (3) years from the date of this contract.¹

Section 7 further provides that the contract is not effective until approved by this Commission.²

Newport alleges in its complaint that the construction of additional facilities to implement the contract and the granting of a Certificate of Convenience and Necessity to either of the districts will result in a wasteful duplication of facilities. It further alleges that Campbell has violated KRS 278.030 since it has failed to secure water for its customers at the least possible cost and thereby has unreasonably increased the rates of its customers. After November 1, 1988, Newport raised its wholesale rate to Campbell to 77 cents per 1000 gallons allegedly to recover

capital expenditures incurred to meet the needs of Campbell District prior to the effective date of the newly executed contract. Prior to November 1, 1988 Campbell was paying 52 cents per 1000 gallons for water provided by Newport.

Newport filed this complaint to prevent implementation of the contract between Kenton and Campbell Districts. Newport requests 1) the Commission require Campbell District to negotiate for a long-term supply contract at the least cost; 2) the Commission disapprove the water supply contract between Kenton and Campbell Districts; 3) the Commission direct Campbell District to take water from Newport under the terms of Newport's November 28, 1988 proposal or alternatively reduce the purchased water cost of Campbell District to an amount that would have been incurred had Campbell District purchased its water from Newport under the terms of the November 28, 1988 proposal; and 4) the Commission order that both districts abstain from any construction that may be wasteful and duplicative.

Atkins and Franzen Complaint

Two customers of Campbell District, Charles Atkins and Steven Franzen ("Atkins/Franzen"), filed a complaint on January 24, 1989 naming Campbell District as a defendant alleging that "since and because this contract was entered and signed the rates for district customers have increased by \$.25 per 1000 gallons." Complainants allege that Campbell District is in violation of KRS 278.030 in that the new rate being charged is unreasonable.

By Order entered February 6, 1989, the Commission found that the Newport and Atkins/Franzen complaints presented common

questions of law and fact and pursuant to Civil Rule 42 should be consolidated.

Intervenors in Case No. 89-014 are the Attorney General of the Commonwealth of Kentucky, by and through his Utility and Rate Intervention Division ("AG"), and the city of Highland Heights Water and Sewer Commission ("Highland Heights"). All parties appeared and participated at the public hearing on this matter held October 17-20, 24, and 26, 1989.

CASE NO. 89-029

This case was established upon the filing of the application of Campbell District for approval of certain construction and related financing. Campbell District also requested an adjustment of its rates and submitted for Commission approval the water purchase contract with Kenton District which forms the basis for the two complaints in Case No. 89-014.

By Order dated April 27, 1989, the Commission acting pursuant to KRS 278.190 suspended Campbell District's proposed rates for 5 months from the proposed effective date. Further, by Order issued upon its own motion, dated August 25, 1989, the Commission found the issues presented by Case No. 89-014 and Case No. 89-029 to be inexorably linked and ordered the record of Case No. 89-014 incorporated into the record of Case No. 89-029.

The AG, Highland Heights, Newport and Atkins/Franzen all by appropriate motions requested and were granted full intervention.

A public hearing was held December 5, 1989.

CASE NO. 89-179

This case was established to consider the application of Kenton District for approval of proposed construction necessary to serve Campbell District under the water supply contract submitted for Commission approval in Case No. 89-029. The proposed construction is intended to increase Kenton District's Ft. Thomas treatment plant capacity from 33 million gallons per day ("MGD") to 44 MGD. Kenton District further requests authority to issue \$2.1 million in waterworks revenue bonds although an adjustment of its rates was not requested.

By Order dated November 1, 1989 the Commission, acting on its own motion, ordered that the records of Case No. 89-014 and 89-029 be incorporated into the record of Case No. 89-179. Pursuant to a directive from the Commission in that same Order, Kenton District requested that a hearing be scheduled on its application. The public hearing was held December 22, 1989. Intervenors participating were Newport, the AG, the city of Florence, the Boone County Water and Sewer District, and the city of Taylor Mill.

I. WATER SUPPLY CONTRACT

Newport argues that Campbell District's decision to utilize Kenton District as exclusive supplier was imprudently made without consideration of all relevant factors. It further argues that Campbell District has the burden of persuading the Commission that the contract falls within the exclusive purview of management. In addition to the above arguments, Newport and Atkins/Franzen feel the cost to Campbell District ratepayers is unreasonable and

excessive when compared with the costs of continuing to purchase from Newport.

Campbell and Kenton Districts respond that the concept of "least cost" should not be applied in the instant proceedings since it is normally a term associated with production costs and has not been rigidly applied by the Commission as the primary criteria for deciding disputes among competing suppliers.

The districts assert that the Commission may not substitute its judgment for that of Campbell District's management and that the only basis upon which the Commission may void the contract is to find the presumption of reasonableness of management's decision has been overcome.

Management decisions are presumed to be reasonable. Pa Pub. Util. Comm'n v. Phila. Elec. Co., 561 A.2d 1224; West Ohio Gas Co. v. Ohio Pub. Util. Comm'n, 294 U.S. 63 (1935).

This presumption operates until it is shown that:

(1). . . the questioned outlays represent 'inefficiency' or 'improvidence' or (2) managerial discretion has been abused, or (3) the action taken has been 'arbitrary' or 'inimical to the public interest,' or (4) there has been 'economic waste,' or (5) such outlays were not legitimate operating expenses because they were 'in excess of just and reasonable charges.'³

Hindsight cannot be used in evaluating the prudence of management's actions. Management must be judged on what was known or should have been known at the time of its decision. Pa Pub. Util. Comm'n v. Phila. Elec. Co., supra. The burden of overcoming the presumption of managerial good faith falls on the party challenging it. Once this burden is met, however, management has the burden of demonstrations that its actions were reasonable and

prudent. Re Central Vermont Public Service Corp. (1987) 83 PUR4th 532.

Newport has produced sufficient evidence to overcome the presumption of managerial good faith, thereby placing the burden on Campbell District to show that its refusal to enter negotiations with Newport for a long-term water supply contract and its decision to enter into such a contract with Kenton District is reasonable and prudent. It has shown the following: prior to 1986, Newport and Campbell District had an contract whereby Newport was Campbell District's exclusive water supplier. After lengthy litigation over a contract dispute, this contract was voided.⁴ Thereafter, Newport made several overtures to Campbell District concerning a new water supply contract.⁵ The contract rate in these proposals were 52 cents per 1000 gallons, the rate which Newport was then charging Campbell District. While its proposals were still on the table, Campbell District on September 27, 1988 entered a contract with Kenton District whereby Kenton District would be Campbell District's exclusive water supplier for a period of 20 years. The contract would be set by the Commission. Currently, Kenton District is authorized to sell water to Campbell District at 77 cents per 1000 gallons.

As a result of the Campbell District-Kenton District contract, Newport raised its rate to 77 cents per 1000 gallons. Newport needs to recover its recent capital expenditures to upgrade its water treatment facility. The expenditures had been made, in part, to improve its service to Campbell District and were to be collected over a 20 year period. As Campbell District

would not be a customer over that period, Newport's rates had to be increased to accelerate recovery of those capital expenditures. Newport stands ready, willing, and able to enter into a long-term water supply contract with Campbell District at the lower rate of 52 cents per 1000 gallons. Campbell District refuses to entertain its offers. Campbell District incurs additional purchase water expenses of \$450,000 as a result of its refusal to enter a long-term water supply contract with Newport.

Newport also pointed to Campbell District's failure to comply with the recommendations of the Campbell County Blue Ribbon Water Committee ("Blue Ribbon Committee"). After Campbell District's board of commissioners voted in April 1988 to enter into an exclusive contract with Kenton District, the county judge/executive of Campbell County appointed an advisory committee of five local residents, the Blue Ribbon Committee, to consider the water supply alternatives available to Campbell District. It was charged with the responsibility of evaluating the supply alternatives of Campbell District with respect to cost, supply, and water quality.⁶ In its final report, issued August 15, 1988, the Blue Ribbon Committee recommended that Campbell District explore the possibility of the creation of a regional water authority composed of Campbell District, Kenton District, and Newport prior to making any switch of suppliers.⁷ Campbell District's general manager testified that this recommendation was ignored by Campbell District's board of commissioners and that the district fully intended to execute its contract with Kenton District irrespective of the Blue Ribbon Committee's findings.⁸

Newport having overcome the presumption of managerial good faith, Campbell District must show that its actions were reasonable. Though the Campbell District commissioners had sole responsibility and authority to make the decision, none offered testimony to support its decision. Testifying in its place Campbell District's superintendent testified that the commissioners based its decision on 11 factors. It is doubtful that these 11 factors were actually considered as it was indicated on cross-examination that this list was formulated by the District's superintendent, legal counsel, an engineer, well after the decision to switch was made.⁹

While these factors were probably not considered by the commissioners in the form presented by Campbell District, they provide the Commission with some information relative to what Campbell District's board "knew or should have known" at the time of its decision. The 11 factors offered to support the decision were: 1) Public Service Commission jurisdiction; 2) location of facilities; 3) compatibility with supplier; 4) price; 5) management; 6) size; 7) past experience with supplier; 8) water quality; 9) ability to finance; 10) reliability and readiness to serve; and 11) ability to cope with increased requirements of the Safe Drinking Water Act. Of these 11 factors cost, Public Service Commission jurisdiction, water quality, and past experience with supplier were shown to be primary motivators.

No discernible difference existed between the quality of water being supplied by Newport and that available from Kenton District at the time the decision to switch was made or at the

time the contract was executed. Both Newport and Kenton District produce water which comparably met and continue to meet all applicable state and federal guidelines over a nine year period (July 1979 - April 1988).¹⁰ Water samples taken from Newport in May 1988 were also within all state and federal guidelines.¹¹ Campbell District's superintendent admits that Newport's quality of water improved and the District's complaints diminished after a substantial upgrade was completed at the Newport plant.

Campbell District makes much of the fact that over 3500 complaints had been received by the District from 1985 through April 1988.¹² Approximately 1700 were "muddy water" complaints received predominately from the Ft. Thomas area in 1985 and 1986.¹³ It should be noted that the Ft. Thomas area has many dead end mains¹⁴ and much of the district's distribution system in that area is approximately 100 years old,¹⁵ such that it is probable that the antiquated distribution system in the Ft. Thomas area contributed to the number of complaints.¹⁶ Additionally, "mildly aggressive" water may have been a factor.¹⁷ Campbell District, however, made no systematic study or analysis of its complaint records.¹⁸ It is not known whether a pattern to the complaints received relates to a particular geographical area or particular season.¹⁹

What is known is that Campbell District felt that the water quality problems were in part the result of its own distribution system. Campbell District officials acknowledged at a meeting in July 1988 with Newport officials that its water quality problems were related to its distribution system and not with the quality of water being supplied by Newport.²⁰

Additionally, Campbell District referred to a lack of maintenance on the Newport system for a period of years as predicated its decision to switch suppliers; however, the Newport plant underwent renovation which was substantially completed in 1987,²¹ the year before the exclusive contract with Kenton District was executed. Furthermore, no Campbell District official or employee inspected or visited the Newport plant after this renovation was completed.

Given that Kenton District is regulated by this Commission while Newport is not, Campbell District's superintendent asserts that Commission regulation will keep Kenton District's rates more reasonable.²² However, Newport's rate, for several years prior to execution of the contract was much lower than Kenton District's.²³ Campbell District also asserts that Commission regulation over their supplier would allow them more flexibility, especially with respect to the Commission's ability to recognize changed circumstances.²⁴ Under the Newport/Campbell District contract which was voided by the courts, rates were set by formula. Campbell District did not anticipate the growth which occurred later in the contract period²⁵ and was, therefore, "locked-in" to what they felt was a bad deal.

The Commission agrees that in setting reasonable rates for utility service, a certain degree of flexibility is needed. It is purely speculative at this time, however, to assert that purchasing from Kenton District would not prevent Campbell District from being locked into what it considers another bad deal.

Campbell District argues that under the old contract with Newport, all such growth as is occurring will be experienced by Campbell District, and yet Campbell District would be required to pay some 80 percent of Newport's expansion costs under the contract formula.²⁶ The Commission finds this reasoning unpersuasive since, regardless of who the supplier is, costs associated with supplying a customer who is experiencing unusual growth should be assessed to that customer. In other words, Kenton District's wholesale rate to any customer would be based on the costs of serving that customer and it is pure speculation to suggest that if Kenton District were the sole supplier, Campbell District would not be required to pay expansion costs associated with the demand they place on the system.

Campbell District also asserts that Commission jurisdiction over its water supplier will ensure higher quality of water. The Commission believes Campbell District to be mistaken. The primary governmental agency in the Commonwealth for regulating water quality is the Division of Water, Natural Resources and Environmental Protection Cabinet. Its authority extend to both regulated and municipal utilities. Newport, therefore, will be regulated to the same extent as Kenton District as to water quality. While Commission regulations impose additional requirements on water quality, the Commission does not find these to be of any great significance or to afford any additional protection.

"Price" was also referenced by Campbell District as a factor relied upon in deciding to enter into the exclusive water supply

contract with Kenton District. Engineering reports available to Campbell District's management prior to deliberating the switch in suppliers show that remaining with Newport as sole supplier or using Newport primarily and Kenton District for peak demands were consistently shown to be the least cost alternatives available to Campbell District. These reports prepared by Campbell District's engineer from September 1986 through November 1987 demonstrate the costs associated with the two alternatives above, as well as purchasing solely from Kenton District or the Cincinnati Water Works, and included costs for new groundwater sources and a treatment facility for Campbell District. Of all the alternatives considered, purchasing solely from Kenton District was more expensive to the average Campbell District ratepayer (increases of \$3.27²⁷ per month to \$3.95²⁸ per month) than was purchasing solely from Newport (increase of \$2.58 per month²⁹) or purchasing from both Newport and Kenton District (increase of \$2.81 per month).³⁰

"Politics" and water quality were referred to by Campbell District's superintendent as the two most important factors relied upon by Campbell Districts board of commissioners in selecting Kenton District as sole supplier.³¹ Although the witness was unable to articulate just what was meant by politics, the reference was apparently to the fact that Newport is controlled by city government and elected officials while Campbell Districts board of commissioners are appointed by the county judge/executive with the approval of fiscal court.³² This Commission does not

follow this logic. Suffice it to say that it is clear to this Commission that "statesmanship" has been sacrificed upon the altar of "politics."

Campbell District argues that it is more compatible with Kenton District than with Newport. The only reference in the record to incompatibility refers to the relationship between Campbell District's board of commissioners and Newport's elected officials. According to Campbell District's superintendent, the lengthy litigation over the prior water supply contract between Campbell District and Newport left bitter feelings. Because none of the commissioners offered testimony at any of these proceedings, the Commission has no means of gauging the existence or extent of such feelings. In any event, the Commission would give them little weight. The daily operations of Campbell District are not managed by the board of commissioners, but by their employees. Nothing in the record show personal conflicts or problems between the managers and employees of Campbell District and Newport. Furthermore, the commissioners, as public officials, have the duty and responsibility to protect the interests of the district's ratepayers. One such duty is to secure the best source of water supply at the lowest possible cost. Personal animosities should not stand in the way of that duty.

With respect to the other factors cited by Campbell District as supporting its decision to enter into the water supply contract with Kenton District, the Commission must afford them little weight. Campbell argued the importance of centrally located facilities; yet the record shows that while Kenton District is more centrally located in Campbell District's service area,

Newport's plant is centrally located to the most densely populated area in Campbell District's service area. Campbell District argued that size was relevant to its decision to switch. In theory, economies of scale may result from a larger customer base, but this Commission is hesitant to hold that larger utilities are generally capable of providing better quality service. Furthermore, the districts have failed to produce any evidence that this economic maxim applies here.

Of the remaining factors, ability to finance, ability to cope with the Safe Drinking Water Act, and reliability and readiness, only the latter is worthy of mention. Newport demonstrated its willingness to negotiate over a significant period of time prior to the actions taken by Campbell District's management.³³ It supplied approximately 85 percent of the district's requirements with the exception of peak demands in the summer, which Kenton District supplied.³⁴ This Commission is unwilling to find, based on the record created in these cases, that Kenton District was better able to serve than Newport. In fact, Case No. 89-179 demonstrates that Kenton must undertake an expansion project costing approximately \$2.0 million³⁵ in order to provide Campbell District with adequate supply.

Based on the foregoing, the Commission further finds that Campbell District has failed to meet its burden of showing that the board of commissioners acted prudently and reasonably and in the best interests of its customers. The board of commissioners of Campbell District was noticeably absent from this proceeding. Instead of testimony to support its decision, we have testimony of

Campbell District's engineer and superintendent who readily admit the factors relied upon to support the decision were in fact formulated in anticipation of this litigation. Furthermore, these two witnesses have both stated that they either were not asked or did not in fact recommend any course of action to the district's board of commissioners.

In summary, at the time the decision to switch suppliers was made, the water provided by Newport met all state and federal guidelines for quality and had done so for a significant period of time prior to September 1988. The Blue Ribbon Committee did not recommend in its draft or final reports that an immediate switch in suppliers be made and in light of the testimony of the district's witnesses, it is highly questionable whether the district's board of commissioners would have retracted its decision, whatever the recommendations.

At the time the board of commissioners met to vote on the choice of suppliers, the rate for water sales provided by Newport was 52 cents per 1000 gallons and Kenton District's authorized wholesale rate was 77.5 cents per 1000 gallons. Numerous engineering studies were made by Campbell District's engineering firm which showed purchases from Newport or purchases split between Newport and Kenton District to be the least cost alternatives available to Campbell District.

The record reflects that Newport has made substantial improvements to its treatment facilities and that muddy water complaints, whatever the cause, have decreased significantly since 1985-86. Allegations by Campbell District of continuing poor

plant maintenance on the Newport system were unsubstantiated. Furthermore, Newport has demonstrated a course of concern, more capable management and better quality service over a significant period of time prior to Campbell District's decision to switch suppliers. Accordingly, the record in this proceeding will not support a finding that the Campbell District board of commissioners acted reasonably. Therefore, this Commission finds that Campbell District has failed to meet its burden to show that its long-term water supply contract with Kenton District and its decision to change suppliers is prudent, reasonable, and in the best interest of its ratepayers.

Therefore, the Commission must fashion a remedy to protect Campbell District's ratepayers from the effects of that imprudence. Newport urges the Commission to void the water supply contract, order Campbell District to negotiate a long-term water supply contract with Newport, and disallow any purchased water expense in excess of Newport's proffered price of 52 cents per 1000 gallons. The AG likewise has voiced support for disallowance of purchased water costs above Newport's proffered rate.

The Commission lacks the legal authority to void a contract for utility service merely because the purchaser of that service imprudently entered into the contract. Commission jurisdiction is limited to the regulation of utility rates and service. KRS 278.040. In exercising its regulatory powers, however, the Commission may modify the provisions of a contract to the extent

that rates and service are affected. Bd. of Education of Jefferson County v. Dohrman, 620 S.W.2d 328 (Ky. App. 1981); City of Billings v. Pub. Serv. Comm'n, 631 P.2d 1295 (Mont. 1981). To modify or abrogate a contractual term, the Commission must find that the existing contract rates or terms of service are unreasonable. Central Kansas Power Co. v. State Corp. Comm., 316 P.2d 277 (Kan. 1957). The focus of the Commission's review, therefore, is on the reasonableness of the utility's rates and service, not the purchaser's prudence in agreeing to purchase service. In these proceedings none of the parties have disputed the reasonableness of Kenton District's rates.

The terms of the water supply contract do not enlarge the permissible scope of Commission review to allow prudence issues to serve as a basis for voiding the contract. Newport has suggested that because the contract provides that it will not become effective until approved by the Commission, it allows the Commission to consider other issues besides the reasonableness of the contract rates. The contract cannot confer additional powers on to the Commission. The Commission's powers are purely statutory. "[L]ike other administrative agencies, it has only such powers as are conferred expressly or by implication." Croke v. Public Serv. Comm'n, 573 S.W.2d 927, 929 (Ky. App. 1978). Additional powers cannot be conferred on an administrative agency by contract of the parties. Borough of Glen Rock v. Village of Ridgewood, 135 A.2d 506 (N.J. 1957).

The Commission also lacks the power to order Campbell District to enter into negotiations with Newport for a long-term

water supply contract. Such action amounts to the Commission's selection of Campbell District's water supplier which is clearly a management decision. A regulatory commission lacks the power to make such decisions. The United States Supreme Court has noted that:

[W]hile the state may regulate, with the power to enforce reasonable rates and services, it is not the owner of the property of public utility companies, and is not clothed with general power of management incident to ownership.

Missouri v. Southwestern Bell Tele. Co., 262 U.S. 276, 289 (1923).

The power to fix and regulate utility rates "does not carry with it, either explicitly or by necessary implication, the power to make management decisions." Union Carbide Corp. v. Pub. Serv. Comm'n, 428 N.W.2d 322, 328 (Mich. 1988).

Unable to produce any legal precedent to support its suggested course of action, Newport urges the Commission to order negotiations based on the principle of expediency. Newport maintains that disallowance of excessive purchased water expenses associated with the water supply contract is inadequate. Newport further maintains that should Campbell District persist in its efforts to implement its water supply contract with Kenton District, it would lack sufficient revenues to meet operating expenses. The resulting shortfall of revenue "would quickly bankrupt the District."³⁶

The Commission is not convinced that this scenario is likely to occur. We believe that the commissioners of Campbell District will pursue a course designed to ensure the water district's

financial integrity. If they fail to do so, however, the Commission is prepared to exercise the powers at its disposal to protect the water district and its ratepayers. See, e.g., KRS 74.455.

Where costs associated with a management decision are found to be unreasonably and imprudently incurred, the only available remedy to protect a utility's ratepayers from that management decision is to disallow the cost in excess of that found reasonable when establishing new rates. Accordingly, the Commission finds that Campbell District's purchased water expense should be limited to Newport's proffered rate of 52 cents per 1000 gallons for that portion of its purchased water which would have been supplied by Newport had a long-term water supply contract been executed.

II. PROPOSED CONSTRUCTION

The Water Districts have applied for Certificates of Convenience and Necessity to construct new facilities. Kenton seeks facilities which will expand the capacity of its Ft. Thomas Treatment by 11 MGD. Campbell District has proposed 9 separate construction projects to improve its water distribution system. Newport has objected to allow portions of both applications contending that they are not necessary and will result in the wasteful duplication of existing facilities. After extensive review of the evidence, the Commission finds that Campbell District's application should be approved in toto and Kenton District's application be denied.

Kenton District

Kenton District proposes to construct an additional 11 MGD flocculator/clarifier basin and several structures to increase the rated capacity of its Ft. Thomas Treatment Plant to 44 MGD and its total rated capacity to 54 MGD. This expansion is intended to meet the additional demand created by the recent water supply contract between Kenton District and Campbell District. As previously noted, the contract requires Campbell District to purchase its water exclusively from Kenton District. Kenton District projects that by 1991 the peak daily demand of the Water Districts will exceed its planned rated capacity of 43 MGD.³⁷

Kentucky Utilities Co. v. Pub. Serv. Comm'n, 252 S.W.2d 885 (Ky. 1952), requires that an applicant for a Certificate of Public Convenience and Necessity must demonstrate a need for the proposed facilities and an absence of wasteful duplication. Need is demonstrated by showing:

a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed and operated.

. . . the inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.

Id. at 890. "Wasteful duplication" is defined as "an excess of capacity over need" and "an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties." Id.

Kenton District maintains that the proposed construction is needed and will not duplicate existing facilities. Kenton District's engineer testified that the rated capacity of Kenton District's treatment facilities will be insufficient to meet Campbell District's and Kenton District's peak demands after 1991. Additional capacity is, therefore, required to meet the existing and future demands of Kenton District customers. According to Kenton District's general manager, the proposed construction would provide Kenton District with sufficient rated capacity to meet its projected peak demands until 2001 and with a maximum sustainable capacity to meet its projected peak demand until 2007.³⁸ He further testified that the new facilities are expected to generate net revenues of \$774,000.³⁹ An "annual profit" of \$774,000, Kenton District asserts, is not wasteful.⁴⁰

Newport asserts that construction of Kenton District's proposed facilities will result in excess capacity. Newport and Kenton District will have in 1990 a combined capacity of 53.5 MGD. Based upon the projected peak demand of the three utilities in 1990, this combined capacity allows for a reserve margin of approximately 12 percent. If the proposed facilities are constructed, thus allowing Campbell District to be exclusively served by Kenton District, Newport will lose its largest customer and be left with 6.0 MGD of unused capacity. The likelihood of a large user to replace Campbell District and use this capacity is small. Newport is unable to annex additional service territory and no area in Newport exists for a large industrial user to locate. Newport will be left with 96 percent reserve margin.

Kenton District, Newport notes, will have a reserve margin of 27 percent.⁴¹ Both producing utilities, therefore, will be left with excessive reserve margins.

Newport further argues that the proposed construction constitutes excessive investment in relation to productivity. Kenton District's proposed 11 MGD expansion will cost \$2 million. Newport asserts that its treatment plant can be expanded by an additional 9.5 MGD at a cost of \$1 million.⁴² In unit terms, Kenton District's expansion costs \$181,818 per MGD as opposed to Newport's cost of \$105,316. Simply stated, it is 73 percent more expensive on a per unit basis for Kenton District to expand its plant to serve Campbell District than it is for Newport to do so.

Anticipating Newport's arguments, Kenton District asserts that Newport's water treatment facilities cannot be considered by the Commission when determining if a Certificate of Convenience and Necessity should be issued. Kenton District contends that the holding of Kentucky Utilities Co. is applicable only to regulated utilities, not to unregulated municipal utilities. Kenton District further goes on to suggest that the Commission's duty is to "protect regulated utilities."⁴³

The Commission finds Kenton District's interpretation of Kentucky Utilities Co. to be mistaken. The Court in that case made no distinction between regulated and non-regulated utilities. Its focus was solely on the concepts of need and wasteful duplication. Furthermore, the Court reached its decision prior to McClellan v. Louisville Water Co., 351 S.W.2d 197 (Ky. App. 1961) and City of Flemingsburg v. Pub. Serv. Comm'n, 411 S.W.2d 920 (Ky.

App. 1966), at a time when it was still generally held that the Commission exercised some regulatory authority over municipal utilities. It is, therefore, unlikely that the Court intended the distinction between regulated and municipal utilities which Kenton District suggests.

Public policy further requires that the Commission consider municipal utility facilities when ruling upon applications for Certificates of Convenience and Necessity. To ignore the existence of such facilities when determining whether new utility facilities should be constructed, would encourage wasteful and uneconomic competition between regulated and nonregulated utilities and would likely lead to the proliferation of unnecessary utility facilities across the Commonwealth. "[I]t is the duty of the Public Service Commission to prevent ruinous competition. . . ." City of Cold Spring v. Campbell County Water District, 334 S.W.2d 269 (Ky. 1960), overruled on other grounds. While the legislature has withheld from the Commission the power to regulate municipal utilities, it has not withheld the power to prevent needless and wasteful competition with them by regulated utilities. In exercising that power, the Commission remains faithful to its statutory duty which is to protect the public interest.

The Commission is unable to find any substantial inadequacy in the existing service to warrant the issuance of a certificate for Kenton District's proposed facilities. If the rated capacity of Kenton District and Newport are jointly considered, ample water production capacity already exists in the Campbell-Kenton County area. Newport's treatment plant has a rated capacity of 10.5 MGD,

thus giving the area a total rated capacity of 53.5 MGD. This capacity is sufficient to meet the total average daily demand of the area until 2005 and its peak demand until 1995. If the maximum sustainable capacity of both producers is considered, there is sufficient capacity to meet all utilities' projected peak demand until the late 1990s.⁴⁴ The Commission notes also that, save for 3 months of the year, Newport currently supplies Campbell District with its total requirements.

The record also fails to show that the quality of Newport's water service is inadequate. Newport's water meets or exceeds existing Division of Water standards.⁴⁵ Testing recently performed by various organizations have found no significant difference in the quality of water produced by Newport and that produced by Kenton District.⁴⁶ The Commission is aware of Campbell District's complaints of water discoloration. The evidence of record, however, is inconclusive as to the cause of that water discoloration. While Newport's water treatment process may have initially contributed to water discoloration, the principal culprit appears to be Campbell District's own antiquated distribution system. Whatever its cause, these water discoloration problems ceased in early 1987. Since that time, Campbell County officials have testified, Newport has provided water of good quality and absent any discoloration.

Since 1985 Newport has embarked on an extensive modernization program for its water production facilities. In June 1986, it completed construction on a new raw water transmission main. In 1988 it completed a \$1.45 million project to upgrade its

filtration plant which included, inter alia, replacement of filter media, chemical feed equipment, flow control and monitoring equipment. It initiated a corrosion control program and installed a pH control system to automatically adjust finished water pH for corrosion control. Newport has also retained a full-time laboratory technician to improve process monitoring and water quality control.⁴⁷ In light of these developments, the Commission is unable to find that the current service is inadequate. With the above in mind, the Commission finds that the proposed construction will result in a wasteful duplication of facilities.

Kenton District's contention that the proposed construction is not wasteful because it generates net revenues of \$774,000 is misleading. The "profit" which Kenton District insists will result from the facilities is merely a transfer of revenue to Kenton District from Newport. No new demand in the Kenton County/Campbell County area will be served by the proposed facilities. Rather, the proposed facilities will substitute for Newport's existing facilities providing the same quantity of water to Campbell District which Newport currently provides. The Commission also finds that the proposed facilities constitute an excessive investment in connection with the productivity of Newport's existing treatment plant and result in \$105,316 per MGD of additional capacity as opposed to \$181,818 per MGD for Kenton District's proposed construction.

Accordingly, the Commission must deny Kenton District's application.

Campbell District

Campbell District has applied for a Certificate of Public Convenience and Necessity to perform nine construction projects designed to improve its water distribution system. These include construction of a 10 MGD pump station and a 3 MGD pump station, the construction of a 2,000,000 gallon elevated water storage tank, installation of several water main lines, and the installation of Supervisory Control and Data Acquisition System ("SCADA"). Of these projects only three are in dispute - the construction of a 10 MGD pump station, the construction of a 16 inch water main along Military Parkway, and the installation of pressure regulators. Newport contends that these construction projects would result in wasteful duplication of existing facilities.

The Commission finds that the Campbell District has proved that a need exists for the 10 MGD pump station. The current pump station is housed in a 102-year-old building on land not owned by Campbell District. The building is in poor condition and currently lacks sufficient space to house backup pumping equipment as required by Commission regulations. Furthermore, Kenton District's primary raw water mains run directly beneath the floor of the pumping station. The location of these raw water mains make repair work very difficult.⁴⁸

Newport has suggested that the proposed pumping station would have a pumping capacity greater than that required. Campbell District has responded to such suggestion by stating that the additional pumping capacity would be needed in the event of an

emergency and to meet the growing demand for water. The Commission finds these reasons plausible.

Newport also contends that the proposed construction of a 16 inch main along Military Parkway is unnecessary. Newport states that the water flows from the pumping station along the proposed construction line are not so great as to require replacements of water lines. The Commission having reviewed the analyses submitted by Newport and Campbell District is not persuaded by Newport's arguments.

Finally, Newport also contends that the installation of pressure regulators in the Dayton/Bellevue area is not required. The evidence shows, however, that there are pressure problems in the area to be served and that the pressure regulators would serve as part of SCADA system to regulate water flows to the water storage tanks situated in that area. Accordingly, the regulators are needed and justified.

Commission Investigation

The Commission feels the recommendations of the Blue Ribbon Committee regarding the investigation of forming a regionalized water system in northern Kentucky have merit. Given that the instant cases present a request by one utility for construction of additional water supply facilities in a region where it is wasteful to construct such facilities, and given the disputes between the parties to the instant proceedings over water quality and supply, the Commission finds that the advisability and feasibility of merger should be investigated. By separate Order

the Commission has established a proceeding to investigate this matter.

III. CAMPBELL DISTRICT'S RATES

Revenues and Expenses

In its application Campbell District proposed test-year normalized operating revenues of \$4,275,842, other income of \$170,287, and operating expenses of \$3,147,330. Campbell District also proposed several adjustments to its test-year operating expenses and other income in an effort to normalize current operating conditions.

After a review of Campbell District's application and being otherwise sufficiently advised, the Commission finds the adjustments proposed by Campbell District to be reasonable, subject to the exceptions noted below.

Operating Revenues

Sales of Water. Campbell District proposed normalized revenues from water sales of \$4,242,827. While this amount has been calculated correctly, an additional adjustment should be made to include normalized revenues of \$15,100 for the 72 new customers. Interdepartmental sales of \$846 should also be included in normalized revenues.

Based on these adjustments, test-year operating revenues from sales reported by Campbell District should be increased by \$15,946.

Other Operating Revenues. In its application, Campbell District did not include other operating revenues in its calculation of revenue requirements. A two-year average (based on

1987 and 1988) of other operating revenues should be included for rate-making purposes for an increase to operating revenues of \$49,046; therefore, total operating revenues should be increased to \$4,340,834.

Operating Expenses

Source of Supply Expense - Purchased Water. In its application, Campbell District proposed to increase purchased water expense by \$349,601 for normalization and \$4,569 for 72 new customers, resulting in a total increase of \$354,170. Campbell District currently purchases 86 percent of its water from Newport at a rate of 77 cents per 1000 gallons and 14 percent of its water from Kenton District at a rate of 77.5 cents per 1000 gallons. Based upon the findings addressed herein, the Commission finds that purchased water expense shall be limited to 52 cents per 1000 gallons for 86 percent of Campbell District's supply.

Based on test-year line loss of 6.29 percent, normalized usage for new customers is 5,347,562 gallons. When combined with test-year purchased water of 1,987,689,300 gallons, Campbell District's total purchased water is 1,993,036,862 gallons, resulting in normalized purchased water expense of \$1,106,582. Accordingly, the Commission has decreased this expense by \$76,511 for rate-making purposes.

Transmission and Distribution. Campbell District proposed an adjustment to increase this expense by \$16,300 based on projected operating expenses resulting from the new construction. The district failed to show a known and measurable basis for this

adjustment and accordingly, it cannot be allowed for rate-making purposes.

Administrative and General - Insurance. Campbell District proposed an adjustment to increase insurance expense by \$3,500 to cover the premium for the new construction. The actual projection made by the insurance company was \$3,980; therefore, inclusion of the full amount is appropriate for rate-making purposes.

Taxes Other Than Income Taxes - FICA. An adjustment was proposed to increase social security tax expense by \$3,093 as a result of the increase in salary expense. This adjustment was based on a percentage of 7.15 percent. The current rate in effect for FICA is 7.65 percent. Therefore, the proper amount to be included is \$3,309.⁴⁹

Rate Case Expense. Campbell District proposed annual amortization of rate case expense of \$2,333. Based on information filed on December 22, 1989, the total actual rate case expense incurred by Campbell District in Case Nos. 89-029 and 89-014 is \$86,549. Amortized over a period of three years, the resulting increase in annual rate case expense is \$28,850.

Based on the aforementioned adjustments, Campbell District's test-year operations appear as follows:

| | <u>Test Year Per Application</u> | <u>Recommended Adjustments</u> | <u>Test Year Adjusted</u> |
|--------------------------------------|--------------------------------------|------------------------------------|-------------------------------|
| Operating Revenues | \$4,275,842 | \$ 64,992 | \$4,340,834 |
| Operating Expenses | <u>3,147,330</u> | <u>117,267</u> | <u>3,264,597</u> |
| Operating Income | \$1,128,512 | \$<52,275> | \$ 1,076,237 |
| Other Income | <u>170,287</u> | <u><64,945></u> | <u>105,342</u> |
| Income Available for Debt Service | <u>\$1,298,799</u> | <u>\$<117,220></u> | <u>\$1,181,579</u> |

Revenue Requirements and Authorized Increase

Based on the aforementioned adjustments, the Commission finds that Campbell District's annual revenue requirement is \$4,584,342, calculated as follows:

| | |
|-----------------------------|---------------------|
| Annual Debt Service | \$1,053,029 |
| 25% Debt Service Coverage | 263,257 |
| Silver Grove Debt Service | 3,459 ⁵⁰ |
| Adjusted Operating Expenses | <u>3,264,597</u> |
| Total Revenue Requirement | <u>\$4,584,342</u> |

To achieve a sufficient level of income to meet its revenue requirements, Campbell District is entitled to increase its rates and charges to produce additional revenues on an annual basis of \$138,166 determined as follows:

| | |
|---------------------------|-------------------|
| Total Revenue Requirement | \$4,584,342 |
| Less: Operating Revenues | 4,340,834 |
| Other Income | <u>105,342</u> |
| Required Revenue Increase | <u>\$ 138,166</u> |

After a review of the application and based upon the above adjustments, the Commission finds that Campbell District is entitled to increase its rates by \$138,166.

RATE DESIGN

Campbell District's current rate design consists of five increments ranging from a minimum usage category of 3,000 gallons to an over 150,000 gallon level. Campbell District has proposed to change its rate design to resemble the commodity-demand method of cost allocation.

The commodity-demand method of cost allocation results in a customer charge to generally recover metering, billing and

collection costs, a commodity charge based on the total volume of water used, and a demand charge based on the customer's peak load imposed on the system. The latter would require the installation of demand meters which is usually not cost beneficial for residential users.

Campbell District has proposed a two step rate design. The first step is designed to cover fixed costs such as amortization, debt coverage and depreciation. In an effort to reduce the impact of the proposed rate increase on its customers, Campbell District proposed to maintain its current minimum usage allowance of 3,000 gallons in this rate step. The second step is designed to cover commodity costs such as operating and maintenance expenses as a cost per unit of volume.

Upon review of Campbell District's rate study, the Commission finds that the proposed rate design will attain a more equitable distribution of costs, promote water conservation, and will be in the best interest of both Campbell District and its customers and should therefore be approved.

Non-recurring Charges

Campbell District provided cost justification to increase its meter installation fees. Campbell District proposed to increase its 3/4 inch connection from \$275 to \$650 and to increase its 1 inch connection fee from \$575 to \$850. Campbell District additionally proposed to charge the actual cost of installation plus 10 percent overhead for all connections made larger than 1 inch.

The Commission finds that the cost justification provided by Campbell District for these services is adequate, and the aforementioned non-recurring charges should be approved.

FINDINGS

After consideration of all evidence of record and being otherwise sufficiently advised, the Commission finds:

1. The water produced by Newport has met or exceeded all state and federal water quality standards since 1979.

2. No discernible difference exists in the quality of water produced by Newport and Kenton District.

3. On or before November 18, 1987, Newport has offered to sell all of its excess water to Campbell District at a rate of 52 cents per 1000 gallons. Newport remains ready, willing and able to enter into a long-term water supply contract with Campbell District at this rate.

4. As a result of Campbell District's decision to enter into an exclusive water supply contract with Kenton District, Newport increased its rate to Campbell District to 77 cents per 1000 gallons.

5. The presumption of managerial good faith has been overcome.

6. Campbell District has failed to meet its burden to show that its refusal to negotiate a long-term water supply contract with Newport and its decision to enter into an exclusive water supply contract with Kenton District was prudent, reasonable and in the best interest of its customers.

7. The purchased water expenses in excess of 52 cents per 1000 gallons for 86 percent of Campbell District's water supply should be denied as unreasonable and excessive.

8. The construction proposed in Campbell District's application is needed to provide adequate service and will not result in a wasteful duplication of facilities.

9. Campbell District should be granted a Certificate of Public Convenience and Necessity to proceed with the proposed construction projects as set forth in the plans, drawings, and specifications contained in its application.

10. The issuance of \$5,535,000 of water works revenue bonds is for a lawful object within the corporate purposes of Campbell District, is necessary and appropriate with the proper performance of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.

11. The rates proposed by Campbell District in its application should be denied.

12. The rates and charges for Campbell District contained in Appendix A, attached hereto and incorporated herein, are fair, just, and reasonable and should therefore be approved for services rendered on and after the date of this Order.

13. Campbell District's proposed rate design is reasonable and should be approved as effective on and after the date of this Order.

14. No substantial inadequacy of service presently exists in the Kenton-Campbell County area.

15. Newport's water production facilities have a rated capacity of 10.5 MGD.

16. Kenton District's water production facilities as of 1990 will have a total rated capacity of 43 MGD and a maximum sustainable capacity of 47 MGD.

17. The combined rated capacity of Newport and Kenton District water production facilities will meet the peak demand of Newport, Campbell District, and Kenton District until 1995.

18. The total maximum sustainable capacity of Newport's and Kenton District's facilities will be sufficient to meet projected peak demands until the late 1990s.

19. Kenton District's proposed construction will result in excess capacity.

20. Kenton District's application for a Certificate of Public Convenience and Necessity should be denied.

21. Kenton District's application for authority to issue waterworks revenue bonds in the principal amount of \$2,335,000 should be denied.

IT IS THEREFORE ORDERED that:

1. The rates proposed by Campbell District in its application are denied.

2. The rates contained in Appendix A to this Order are approved for service rendered by Campbell District on and after the date of this Order.

3. Within 20 days of the date of this Order, Campbell District shall file with the Commission its revised tariff setting out the rates approved herein.

4. A Certificate of Public Convenience and Necessity is granted to Campbell District to proceed with the proposed construction projects as set forth in the plans, drawings, and specifications contained in its application.

5. Campbell District shall furnish duly verified documentation of the total cost of these projects including the cost of construction and other capitalized costs (engineering, legal, administrative, etc.) within 60 days of the date that construction is substantially completed. Said construction costs shall be classified into appropriate plant accounts in accordance with the Uniform System of Accounts for Water Utilities prescribed by the Commission.

6. Campbell District's contract with its engineer shall require the provision of a full-time resident inspector under the general supervision of a professional engineer with a Kentucky registration in civil or mechanical engineering to ensure that the construction work is performed in accordance with the contract plans, drawings, and specifications and in conformance with the best practices of the construction trades involved in the projects.

7. Campbell District shall furnish to the Commission within 60 days of the date of substantial completion of this construction a copy of the "as-built" drawings and a verified statement from the supervising professional engineer that the construction has been satisfactorily completed in accordance with the contract plans and specifications.

8. Any deviations from the construction plans, drawings, and specifications herein approved which could adversely affect service to any customer shall be subject to the prior approval of the Commission.

9. Campbell District is authorized to issue revenue bonds in the principal amount of approximately \$5,535,000.

10. The proceeds from the issuance of said revenue bonds shall be used only for the lawful proposes set out in Campbell District's application.


11. Kenton District's application for a Certificate of Public Convenience and Necessity is denied.

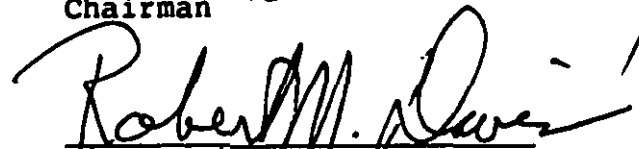
12. Kenton District's application for authority to issue revenue bonds in the principal amount of approximately \$2,335,000 is denied.

Nothing contained herein shall be deemed a warranty or finding of value of securities authorized herein on the part of the Commonwealth of Kentucky or any agency thereof.

Done at Frankfort, Kentucky, this 31st day of January, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:


Executive Director

Commissioner

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 89-029 DATED 1/31/90

The following rates and charges are prescribed for the customers in the area served by Campbell County Kentucky Water District. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under authority of this Commission prior to the effective date of this Order.

RATE SCHEDULE

| | |
|--------------------------------------|------------------------|
| First 3,000 gallons used per quarter | \$14.17 Minimum Bill |
| Over 3,000 gallons used per quarter | 2.45 per 1,000 gallons |

MINIMUM QUARTERLY RATES

| <u>Meter Size</u> | <u>Minimum Usage</u> | <u>Minimum Bill</u> |
|-------------------|----------------------|---------------------|
| 5/8 Inch Meter | 3,000 gallons | \$ 14.17 |
| 3/4 Inch Meter | 4,444 gallons | 17.71 |
| 1 Inch Meter | 11,757 gallons | 35.62 |
| 1 1/2 Inch Meter | 28,610 gallons | 76.91 |
| 2 Inch Meter | 47,560 gallons | 123.34 |
| 3 Inch Meter | 140,050 gallons | 349.94 |
| 4 Inch Meter | 260,440 gallons | 644.90 |
| 6 Inch Meter | 642,369 gallons | 1,580.62 |

Wholesale Customers

| | |
|---------------------------------|--------------------------|
| Pendleton County Water District | \$1.20 per 1,000 gallons |
| City of Highland Heights | 1.15 per 1,000 gallons |
| City of Crestview | 1.15 per 1,000 gallons |

ENDNOTES TO AN ORDER OF THE PUBLIC SERVICE
COMMISSION IN CASE NOS. 89-014, 89-029 and 89-179
DATED

- 1 Campbell District Exhibit 1 (No. 89-014).
- 2 Id.
- 3 1 A. Priest, Principles of Public Utility Regulation 561
(1969).
- 4 City of Newport v. Campbell County Water District, No.
78-CI-983 (Campbell Cir. July 1, 1985), aff'd sub. nom.,
Campbell County Water District, No. 85-CA-1932 (Ky. App. May
23, 1986).
- 5 Newport Exhibits 6, 7, 9-11, 15-16 (No. 89-014).
- 6 TR, Vol. 2 at 126 (No. 89-014).
- 7 Newport Exhibit 45 at 6-7 (Case No. 89-014). Some
controversy exists as to whether the report's findings
actually reflect the true findings of the majority of the
Blue Ribbon Committee. Two members of the Blue Ribbon
Committee, Dr. Eugene Scoles and Eric Haas, testified that
the final report recommended that Campbell District continue
to purchase the bulk of its water requirements from Newport.
TR, Vol. 2 at 184 (No. 89-014). Jack Moreland, Chairman of
the committee, testified that the final report recommended,
in the event that a Northern Kentucky Regional Water
Authority was not established, Campbell District switch
suppliers. TR, Vol. 4 at 98-99 (No. 89-014).
- 8 TR, Vol. 3 at 167-168 (No. 89-014).
- 9 TR, Vol. 4 at 172 (No. 89-014).
- 10 Newport Exhibit 45 (No. 89-014).
- 11 Newport Exhibit 43 (No. 89-014).
- 12 TR, Vol. 3 at 102 (No. 89-014).
- 13 Campbell District Exhibit 7 (No. 89-014).
- 14 TR, Vol. 4 at 8 (No. 89-014).
- 15 Id.
- 16 TR, Vol. 3 at 7 (No. 89-014).
- 17 TR, Vol. 6 at 58 (No. 89-014).
- 18 TR, Vol. 4 at 19 (No. 89-014).
- 19 TR, Vol. 3 at 102 (No. 89-014).

20 Newport Exhibit 33 (89-014).
21 Newport Exhibit 4 (89-014).
22 Prefiled Testimony of Ron C. Malone at 8 (No. 89-014).
23 Campbell District's Response to Commission's Order of
September 25, 1989, Item 13 (No. 89-029).
24 TR, Vol. 3 at 135 (No. 89-014).
25 Id. at 137.
26 Prefiled Testimony of Ron C. Malone at 8 (No. 89-014).
27 Campbell District Exhibit 10 at 2 (No. 89-014).
28 Campbell District Exhibit 13 at 4 (No. 89-014).
29 Campbell District Exhibit 12 at 4 (No. 89-014).
30 Id.
31 TR, Vol. 3 at 183 (No. 89-014).
32 Id. at 139-141.
33 Newport Exhibit 7 at 14-18 (No. 89-014).
34 Brief of City of Newport at 1 (No. 89-014).
35 Prefiled Testimony of Barry Y. Dixon at 3 (No. 89-179).
36 Brief of Newport at 24, n. 9 (No. 89-029).
37 Prefiled Testimony of Dennis Willaman at 4 (No. 89-179).
38 Prefiled Testimony of Dennis Willaman at 4 (No. 89-179).
39 Id. at 5.
40 Brief of Kenton District and Campbell District at 32-33 (No.
89-014).
41 Brief of Newport at 48-49 (No. 89-014).
42 Newport Exhibit 20 (No. 89-014).
43 Reply Brief of Kenton District and Campbell District at 7
(No. 89-014).
44 According to Mr. Willaman's testimony, the maximum
sustainable capacity of Kenton District's facilities as of
1991 will be 47 MGD. When Newport's rated capacity is added
to this amount a total maximum sustainable capacity of 57.5
MGD results.
45 Prefiled Testimony of Robert J. Beebe at 4-5 (No. 89-014).
46 See, e.g., Newport Exhibit 45 (No. 89-014).
47 Newport Exhibit 4 (No. 89-014).
48 TR at 101-103 (No. 89-029).
49 7.65 percent x \$43,263 = \$3,309.

The 5-year average debt service for Silver Grove was recalculated based on information filed by Campbell District in its response to the Commission's September 25, 1989 Order.